

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20620
[Redacted],)	
)	DECISION
Taxpayer.)	
)	
_____)	

On October 4, 2007, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] [Redacted], a sole proprietorship owned by [Redacted] (taxpayers) proposing sales and use tax, and interest for the period of April 1, 2004, through March 31, 2007, in the total amount of \$14,440.

On September 28, 2007, prior to receiving the Notice of Deficiency, the taxpayers filed an appeal and petition for redetermination. The taxpayers did not request a hearing before the Commission.

The taxpayers describe their business as a [Redacted] [Redacted].

Idaho Code § 63-3612 defines the term “sale” for the purposes of the Idaho Sales Tax Act. Sales of goods and services that fall within this definition are taxable when the buyer is the consumer. Included in the definition are charges for the “use of or the privilege of using tangible personal property or facilities for recreation.” [Redacted] is a recreational activity, and therefore the fees that the taxpayers charge are taxable. The taxpayers did not collect and remit sales tax from its customers during the audit period, as required by Idaho Code § 63-3619.

In their protest letter, the taxpayers acknowledged that their sales are taxable. They stated that they did not fail to collect tax because of fraudulent intentions but because they did

not know they were required to. The letter said that the Commission did not advise the industry that their sales were taxable.

In addition, the taxpayers' accountant sent a letter stating the following additional points:

1. [Redacted] operations are a relatively new business in Idaho.
2. A similar business had been audited two years ago and that business failed to notify similar businesses of the audit.
3. The Tax Commission was in "unchartered" territory also. In March of 2007, the Commission "cancelled their initial appointment with the taxpayer to see what, if anything, the legislature would do regarding this sales tax issue for the industry. Seemingly [sic] indicated a "not for sure" attitude regarding the whole situation.
4. [Redacted]

The Commission notes that the taxpayers did not intentionally fail to collect sales tax. Accordingly, the managed audit staff did not impose any penalties on the tax deficiency. Unfortunately, the Commission does not have perfect knowledge of the many new businesses that are formed each year. It is not possible for the Commission to search out and contact new businesses when they start up.

Moreover, the Commission was not uncertain of the application of the law in this case. For example, since the current Sales Tax Act was passed into law in 1965, the Commission has held that fees charged by [Redacted] are taxable. The Commission has also consistently held that fees charged for [Redacted] are taxable.

It is not clear why the managed audit staff postponed the first meeting with the taxpayers; however, the legislature did not consider any bills that would have affected the requirement to collect sales tax in 2007. Several bills were introduced that would have either placed new

restrictions on the industry or banned [Redacted] altogether. None of those bills were actually enacted into law.

Finally, the Commission notes that the taxpayers were not selling [Redacted] on their property. [Redacted]

WHEREFORE, the Notice of Deficiency Determination dated October 4, 2007, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

TAX	INTEREST	TOTAL
\$13,302	\$1,375	\$14,677

Interest is calculated through March 7, 2008, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2008

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
